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Esther Dabney

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EXAMINER

RANKINS, WILLIAM E

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/659,746	<b>Applicant(s)</b> DABNEY ET AL.	
	<b>Examiner</b> WILLIAM E. RANKINS	<b>Art Unit</b> 3696	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20, 23-25 and 39-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20, 23-25 and 39-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

Claims 20-23-25 and 36-63 are pending. Claims 26 and 27 have been canceled. Claims 39-63 have been added.

### ***Response to Arguments***

1. Applicant's arguments, see pgs. 12 and 13, filed 11/30/2009, with respect to claims 20 and 38 have been fully considered and are persuasive. The 102(b) rejection of 11/03/2009 has been withdrawn.

2. Applicant's arguments, see pgs. 12 and 13, filed 11/30/2009, with respect to claims 23-27 have been fully considered and are persuasive. The 103(a) rejection of 11/03/2009 has been withdrawn.

A review of the claims and updated search necessitated the rejections below.

### ***Claim Objections***

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3. Claims 20, 23-27 and 38 are objected to because of the following informalities:  
Each of the independent claims does not positively recite the amended subject matter.  
The newly added limitations use the terms allowing and if. Each of these terms allows the examiner to interpret the limitations as not requiring steps to be performed.  
Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) in view of Gupta (7,130,815).

As per claim 20;

Churchill discloses:

In an online network-connected computer system of the type that receives requests transmitted over a network from users and responds by providing responsive signals over said network for display by said requesting users, a method of performing

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computer based processes to processing online auction-style listings and provide associated responsive signals for display, said method comprising (Fig. 1, Col. 16, lines 23-30):

recording a predetermined listing end time for an auction style listing stored in a computer memory (Col. 7, lines 62-67);

receiving, from users over the network, bids with respect to said auction style listing before said listing and time (col. 9, lines 7-18);

automatically extending said predetermined end time if a bid for said auction-style listing are received near the predetermined listing end time (Col. 43, line 20-34 and Col. 44, lines 38-47); and

sending responsive data to users over the network for display, said sent responsive data indicating at least that said predetermined end time is extended, wherein said automatically extending further extends said already extended end time upon receiving an additional bid after said end time has been extended (Col. 43, lines 20-34 and Col. 44, lines 38-47); and

Churchill does not disclose:

allowing a seller to issue a direct offer to sell to the user with the highest bid if the highest bid is less than a reserve price, and allowing the seller to issue offers to any bidders after a listing expiration.

However, Gupta discloses reserve request reverse auctions where the reverse auction is an improvement upon the EBay type of auction (background). The reverse auction works to receive bids for the lowest possible price as offered by the seller to a

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buyer as opposed to the highest possible prices being offered by buyers to sellers. The reverse auction works to reduce the amount of effort used expended by the buyer. In an embodiment, the reverse auction ends if the buyer receives an offer below the reserve price. In another embodiment, the reverse auction continues until the buyer accepts an offer that is consummated or a time period expires. If the time period expires and no offer is below the reserve price, the user then selects from the received offers (abstract).

The examiner asserts that as the system of Gupta is based on a regular auction such as an EBay style of auction that the systems are comparable and the differences are obvious variations such as where Gupta discloses bids being below a reserve price as opposed to a regular auction where a reserve price is the minimum price acceptable. Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Churchill and Gupta according to KSR rationale a, combining prior art elements according to known methods to yield predictable results.

2. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) in view of Gupta (7,130,815) and Leavitt (2003/0135425).

As per claim 23;

Churchill discloses:

In an online network-connected computer system of the type that receives requests transmitted over a network from users and responds by providing at least data over said network for display by said requesting users, a method of performing

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computer based processes to provide data over the network relating to online auction-style listings, the method comprising (Fig. 1, Col, 16, lines 23-30):

maintaining a database of items available for auction-style listing (Col. 8, lines 4-13);

Churchill does not disclose;

receiving requests allowing sellers to specify whether items are to be listed in said database as conditional or binding transactions;

in response to user requests received over the network, generating and sending data over the network representing displaying of (a) the conditional or binding characteristic of an item listing, and (b) with at least some other information relating to the item; and

receiving further requests representing offers to purchase the item over the network that lead to change in state of the ownership of the item; and

allowing a seller to issue a direct offer to sell to the user with the highest bid if the highest bid is less than a reserve price, and allowing the seller to issue offers to any bidders after a listing expiration.

However, Leavitt discloses:

Seller driven commerce where sellers of goods and services communicate a conditional or binding selling offer to potential buyers (abstract) where the offers are made available to buyers through interfaces (Para. 0006) and the method and apparatus having applications on the internet (Para. 0007). The buyers have the option to accept the conditional sales offers (Para. 0006).

Gupta discloses reserve request reverse auctions where the reverse auction is an improvement upon the EBay type of auction (background). The reverse auction works to receive bids for the lowest possible price as offered by the seller to a buyer as opposed to the highest possible prices being offered by buyers to sellers. The reverse auction works to reduce the amount of effort used expended by the buyer. In an embodiment, the reverse auction ends if the buyer receives an offer below the reserve price. In another embodiment, the reverse auction continues until the buyer accepts an offer that is consummated or a time period expires. If the time period expires and no offer is below the reserve price, the user then selects from the received offers (abstract).

The examiner asserts that as the system of Gupta is based on a regular auction such as an EBay style of auction that the systems are comparable and the differences are obvious variations such as where Gupta discloses bids being below a reserve price as opposed to a regular auction where a reserve price is the minimum price acceptable.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Churchill, Gupta and Leavitt according to KSR rationale A, combining prior art elements according to known methods to yield predictable results.

3. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) in view of Grove (2002/0188551), Elias (20010034694) and Gupta (7,130,815).

As per claim 24;



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Churchill discloses:

In an online network-connected computer system of the type that receives requests transmitted over a network from users and responds by providing at least data over said network for display by said requesting users, a method of providing online auction- style listing services comprising (Fig. 1, Col, 16, lines 23-30):

maintaining at least one database of items listed for sale (Col. 8, lines 4-13);

Churchill does not disclose:

sending, over the network, data representing a user interface display of at least some of said items in a classified advertising listing format;

sending, over the network, data representing a user interface display of at least others of said items in an auction-style listing format; and

allowing sellers, through automatic interaction with the computer system, to select item listings and flexibly change selected item listings between said classified advertising and said auction-style listing formats; and

allowing a seller to issue a direct offer to sell to the user with the highest bid if the highest bid is less than a reserve price, and allowing the seller to issue offers to any bidders after a listing expiration.

However, Grove discloses:

A method of facilitating the display of items of multiple transaction types in a commingled listing (abstract) including fixed price items and auction priced items (Para. 0038).

However, Elias discloses;

An online system for a collectibles market place where sellers can flexibly change their listings between classified, barter and auction listings (Para's. 0034, 035 and 0040).

Gupta discloses reserve request reverse auctions where the reverse auction is an improvement upon the EBay type of auction (background). The reverse auction works to receive bids for the lowest possible price as offered by the seller to a buyer as opposed to the highest possible prices being offered by buyers to sellers. The reverse auction works to reduce the amount of effort used expended by the buyer. In an embodiment, the reverse auction ends if the buyer receives an offer below the reserve price. In another embodiment, the reverse auction continues until the buyer accepts an offer that is consummated or a time period expires. If the time period expires and no offer is below the reserve price, the user then selects from the received offers (abstract).

The examiner asserts that as the system of Gupta is based on a regular auction such as an EBay style of auction that the systems are comparable and the differences are obvious variations such as where Gupta discloses bids being below a reserve price as opposed to a regular auction where a reserve price is the minimum price acceptable.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Churchill, Grove, Elias and Gupta according to KSR rationale A, combining prior art elements according to known methods to yield predictable results.

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4. Claims 25, 39-43 and 54-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) as applied to claim 23 above, and further in view of Fujiwara et al. (20010027433) and Gupta (7,130,815).

As per claim 25;

Churchill discloses:

In an online network-connected computer system of the type that receives requests transmitted over a network from users and responds by providing at least data over said network for display by said requesting users, a method of providing online transaction services comprising: storing auction-style listings in a database; allowing potential bidders to search through and request selective display of at least some of said database contents via messages exchanged over a network; accepting bids from users and providing data representing at least some information concerning said bids to corresponding sellers (See claim 23 rejection); and

Churchill does not disclose;

allowing sellers whose items have been bid upon to use the network to issue offers to sell items users have bid on to corresponding bidders while temporarily suspending auction-style listings for predetermined durations, thereby preventing other users from submitting bids on said suspended auction-style listings when corresponding unaccepted offers to sell from sellers to users for said items are outstanding; and

allowing a seller to issue a direct offer to sell to the user with the highest bid if the highest bid is less than a reserve price, and allowing the seller to issue offers to any bidders after a listing expiration.

However, Fujiwara discloses accepting an offer from a buyer and if the buyer does not respond within a predetermined time, reopening the auction (Para. 0051) and advising bidders that an offer has been accepted and preventing more bids from being made (Para. 0015); and

Gupta discloses reserve request reverse auctions where the reverse auction is an improvement upon the EBay type of auction (background). The reverse auction works to receive bids for the lowest possible price as offered by the seller to a buyer as opposed to the highest possible prices being offered by buyers to sellers. The reverse auction works to reduce the amount of effort used expended by the buyer. In an embodiment, the reverse auction ends if the buyer receives an offer below the reserve price. In another embodiment, the reverse auction continues until the buyer accepts an offer that is consummated or a time period expires. If the time period expires and no offer is below the reserve price, the user then selects from the received offers (abstract).

The examiner asserts that as the system of Gupta is based on a regular auction such as an EBay style of auction that the systems are comparable and the differences are obvious variations such as where Gupta discloses bids being below a reserve price as opposed to a regular auction where a reserve price is the minimum price acceptable.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Churchill, Fujiwara and Gupta

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according to KSR rationale A, combining prior art elements according to known methods to yield predictable results.

Claim 39 is rejected under the same rationale used to reject claims 20 and 25.

Claims 40 and 43 are rejected under the same rationale used to reject claim 39.

As per claim 41;

Churchill does not disclose;

The online network connected computer system of claim 39, wherein the auction style listing includes a notice that there is an outstanding offer when the auction is suspended.

However, Fujiwara discloses where an information of a knockdown is sent to, and displayed, by the client computer of a winner, it is preferable to indicate that the knock-down process is under way and that no bids will be accepted (Para. 0050).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Churchill, Fujiwara and Gupta according to KSR rationale A, combining prior art elements according to known methods to yield predictable results.

Claim 42 is rejected under the same rationale used to reject claims 20 and 25.

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Claim 54 is rejected under the same rationale used to reject claims 25 and 39.

Claim 55 is rejected under the same rationale used to reject claims 40 and 54.

Claim 56 is rejected under the same rationale used to reject claims 41 and 54.

Claim 57 is rejected under the same rationale used to reject claims 25 and 42.

Claim 58 is rejected under the same rationale used to reject claims 43 and 54.

5. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) in view of Gupta (7,130,815) and Official Notice.

As per claim 38;

Churchill discloses:

In an online network-connected computer system of the type that receives requests transmitted over a network from users and responds by providing at least data over said network for display by said requesting users, a method of providing online auction- style listing services comprising (Fig. 1, Col, 16, lines 23-30):

storing information relating to items for sale auction-style in a computer database (Col. 8, lines 4-13);

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scheduling auction-style listings and associated end times associated with said listed items (Col. 7, line 62 - Col. 8, line 3); and

Churchill does not specifically disclose:

posting auction style listings on a web page for viewing by users, said auction style listings soliciting competitive bids while concealing predetermined prices the seller will accept to sell items; and

allowing a seller to issue a direct offer to sell to the user with the highest bid if the highest bid is less than a reserve price, and allowing the seller to issue offers to any bidders after a listing expiration.

However, Churchill discloses an auction system web page for viewing by merchants and bidders (Col. 16, lines 23-36) and the setting of starting and minimum bid prices by the seller where the minimum bid price may be greater than the starting price. The examiner asserts that the minimum bid price is the reserve price (Col. 26, line 55—Col. 27, line 5).

Additionally, the examiner asserts that it was old and well known in the art for reserve prices to be kept from bidders.

Churchill discloses:

receiving, from users over the network, signals representing competitive bids with respect to said auction style listings (col. 9, lines 7-18); and

in response to a bid received before the end of an auction style listing, allowing authorized sellers to accept bids and unilaterally end auction-style listings before said end times (Col. 42, lines 52-60).

Gupta discloses reserve request reverse auctions where the reverse auction is an improvement upon the EBay type of auction (background). The reverse auction works to receive bids for the lowest possible price as offered by the seller to a buyer as opposed to the highest possible prices being offered by buyers to sellers. The reverse auction works to reduce the amount of effort used expended by the buyer. In an embodiment, the reverse auction ends if the buyer receives an offer below the reserve price. In another embodiment, the reverse auction continues until the buyer accepts an offer that is consummated or a time period expires. If the time period expires and no offer is below the reserve price, the user then selects from the received offers (abstract).

The examiner asserts that as the system of Gupta is based on a regular auction such as an EBay style of auction that the systems are comparable and the differences are obvious variations such as where Gupta discloses bids being below a reserve price as opposed to a regular auction where a reserve price is the minimum price acceptable.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Churchill, Gupta and Official Notice according to KSR rationale A, combining prior art elements according to known methods to yield predictable results.

6. Claims 44-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) in view of Gupta (7,130,815), Leavitt (2003/0135425) and Fujiwara (2001/0027433).

Claim 44 is rejected under the same rationale used to reject claims 23 and 39.



Claim 45 is rejected under the same rationale used to reject claims 40 and 44.

Claim 46 is rejected under the same rationale used to reject claims 41 and 44.

Claim 47 is rejected under the same rationale used to reject claims 23 and 42.

Claim 48 is rejected under the same rationale used to reject claims 43 and 44.

7. Claims 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) in view of Grove (2002/0188551), Elias (20010034694), Gupta (7,130,815) and Fujiwara (2001/0027433).

Claim 49 is rejected under the same rationale used to reject claims 24 and 39.

Claim 50 is rejected under the same rationale used to reject claims 40 and 49.

Claim 51 is rejected under the same rationale used to reject claims 41 and 49.

Claim 52 is rejected under the same rationale used to reject claims 24 and 42.

Claim 53 is rejected under the same rationale used to reject claims 43 and 49.

8. Claims 59-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) in view of Gupta (7,130,815), Official Notice and Fujiwara (2001/0027433).

Claim 59 is rejected under the same rationale used to reject claims 38 and 39.

Claim 60 is rejected under the same rationale used to reject claims 40 and 59.

Claim 61 is rejected under the same rationale used to reject claims 41 and 59.

Claim 62 is rejected under the same rationale used to reject claims 38 and 42.

Claim 63 is rejected under the same rationale used to reject claims 43 and 59.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Rankins whose telephone number is 571-270-3465. The examiner can normally be reached on M-F 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hani Kazimi can be reached on 571-272-6745. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William E Rankins/

Examiner, Art Unit 3696

01/20/2010

/Hani M. Kazimi/

Primary Examiner, Art Unit 3691